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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120905422-3394-01]

RIN 0648-BC50

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fishery for the Spiny Dogfish Fishery in the Waters East and West of Cape Cod, MA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule modifies the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels fishing with a NE Federal spiny dogfish permit to fish in an area east of Cape Cod, MA (Eastern Exemption Area) with gillnet and longline gear, from June through December and with handgear from June through August, and to fish in Cape Cod Bay (Western Exemption Area) with longline gear and handgear from June through August. This action allows vessels to harvest spiny dogfish in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP.

DATES: Effective June 1, 2013. Comments on the Western Exemption Area must be received no later than 5 p.m., eastern daylight time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: An environmental assessment (EA) was prepared for this action and other considered alternatives and provides an analysis of the impacts of the approved measures and

alternatives. Copies of this action, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from John K. Bullard, Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0195, by any one of the following methods:

- Written comments (paper, disk, or CD-ROM) should be sent to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, “Comments on Spiny Dogfish Exempted Fishery.”
- Comments also may be sent via facsimile (fax) to (978) 465–3116.
- Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0195](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0195), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments will be posted for public viewing as they are received. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233; fax 978–281–9135; e-mail: [travis.ford@noaa.gov](mailto:travis.ford@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Current regulations, implemented under Framework Adjustment 9 (60 FR 19364, April 18, 1995) and expanded under Amendment 7 to the FMP (61 FR 27710, May 31, 1996), contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England Exemption Areas found in § 648.80. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop days-at-sea (DAS) allocation; is fishing with exempted gear; is fishing under the Small Vessel, Handgear (A or B) or Party/Charter permit restrictions; or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80. A fishery may be exempted by the Regional Administrator (RA) if, after consultation with the New England Fishery Management Council (Council), the RA determines, based on sufficient available data or information, that the bycatch of regulated species (the subset of NE multispecies that requires vessels to use regulated mesh) is, or can be reduced to, less than 5 percent by weight of the total catch, and that such exemption will not jeopardize the fishing mortality objectives of the FMP. We apply the 5-percent NE multispecies threshold at the trip level. Therefore, the percentages calculated were based on the percent of multispecies a vessel caught on a given trip.

Representatives from the NE multispecies sector fleet submitted two exempted fishery requests to the NMFS Northeast Regional Office in December of 2011, requesting that we consider an exempted fishery for gillnet, longline, and handgear vessels targeting spiny dogfish

in portions of the GOM and GB. Sector vessels targeting spiny dogfish in the requested area are currently required to fish on a declared NE multispecies trip and are charged a discard rate that is determined by the Northeast Fisheries Observer Program (NEFOP) and at-sea monitoring (ASM) discard data. The discard rate is based on the sector, area fished, and gear type, and is referred to as a discard stratum. Because discard strata are not defined based on target species, vessels targeting spiny dogfish (and catching very little groundfish) are being charged the discard rate that is used for all other declared groundfish trips in the discard stratum that applies to the sector, area fished, and gear type. This leads to calculations of higher discard rates of groundfish than observed on trips targeting spiny dogfish. We are required to deduct these calculated discards from the sector's Annual Catch Entitlement (ACE). Forfeiting the value of these often uncaught calculated discards, which otherwise could have been landed for sale, has created an economic burden for sector fishermen. It has particularly affected the sector's "choke stocks," i.e., fish for which the sector has a small amount of ACE, either because of a low catch history for that stock or a small annual catch limit (ACL) for the stock.

The original requests from industry proposed a year-round exempted fishery in statistical areas 514, 515, and 521 for vessels using gillnet, longline, and handgear. Due to too few observed trips in large portions of these areas and elevated groundfish bycatch recorded for the trips we do have information for, this action modifies the requested exempted fishery by exempting vessels using certain gear from the NE multispecies regulations in two smaller areas in the waters east and west of Cape Cod, MA, for limited times during the year, depending on the gear type used. One area is east of Cape Cod, which will be referred to as the Eastern Cape Cod Spiny Dogfish Exemption Area. The other area is south of 42° 11.5' N. lat. and west of 70° W. long. which will be referred to as the Western Cape Cod Spiny Dogfish Exemption Area.

In the Eastern Exemption Area (east of Cape Cod), this action exempts vessels using gillnet and longline gear from June through December, and vessels using handgear from June through August. The Eastern Exemption Area and the months of the exemption were developed based on information showing that, of a total of 642 observed trips in fishing years (FY) 2010 and 2011, the average percentage of groundfish caught was 0.09 percent for this modified alternative. Of these observed trips, none caught more than 5 percent regulated groundfish. We assessed another option for the Eastern Exemption Area that would have exempted gillnet, longline, and handgear in the area year-round. The data support the first option analyzed (referred to in the EA as Alternative 1, Option 1) but revealed that bycatch of regulated species (primarily cod and pollock) was elevated in the second option, with insufficient observer data in the area for January through May to make conclusions about bycatch.

Based on data available at the time of the proposed rule, the Eastern Exemption Area (Alternative 1) was included as the preferred alternative. During the public comment period, we received a comment requesting that we expand the exemption area by including the portion of Cape Cod Bay south of 42° N. lat. This area was part of the original request by industry, but it was our initial determination that there were not enough data to exempt this area from the requirements of the NE multispecies regulations. In response to this comment, we made an additional data request to the Massachusetts Department of Marine Fisheries (MA DMF). MA DMF was able to provide data for some supplementary trips in the area from a historical dataset (1995-2002). The MA DMF data included sufficient information for us to expand the proposed exemption area to include the portion of Cape Cod Bay west of 70° W. long. and south of 42° 11.5' N. lat. (Western Exemption Area), as originally requested by industry. The data included a total of 11 trips that spanned the area from June through August for longline gear and handgear.

None of these 11 trips exceeded the 5-percent regulated multispecies threshold. Based on this information, we created the Western Exemption Area as an additional alternative (Alternative 2) within Cape Cod Bay to target spiny dogfish with longline gear and handgear from June through August. Although this area was part of the original request by industry, it was not part of the proposed rule for this action. Therefore, we are accepting comment on this portion of the rule to give the public a chance to comment on the Western Exemption Area (see “DATES”).

Although this action will exempt vessels targeting spiny dogfish from the NE multispecies regulations, this action is not expected to jeopardize mortality objectives of spiny dogfish or groundfish stocks. The existing spiny dogfish fishery is limited by an annual quota and a 4,000-lb (1,814-kg) trip limit. Furthermore, using more accurate groundfish discard rates for spiny dogfish targeted trips will ease some of the burden on vessels participating in the NE multispecies fishery by providing an opportunity to actually land fish that were formerly calculated discards.

The Council was consulted regarding the proposed rule at its September 25, 2012, Council meeting. Some members of the Council were in favor of expanding the exemption over a larger area and for a longer time period, and our addition of the Western Exemption Area supports this expansion. The Council as a whole raised no objections to this exemption.

#### Approved Measures

#### Eastern and Western Cape Cod Spiny Dogfish Exemption Areas

The RA has determined that an exempted spiny dogfish fishery in two specifically defined portion of the waters east and west of Cape Cod, MA, meets the exemption requirements in § 648.80(a)(8)(i). Analysis of available data indicate that bycatch of regulated species by vessels using gillnet and longline gear from June through December, and handgear from June

through August in the Eastern Exemption Area, and vessels using longline gear and handgear from June through August in the Western Exemption Area, is less than 5 percent, by weight, of the total catch. The RA has also determined that the exemption will not jeopardize the fishing mortality objectives of the FMP because vessels will still be limited by the spiny dogfish annual quota and trip limit.

The industry request that we expand the exemption area into Cape Cod Bay asked for gillnet gear to be exempted in addition to longline gear and handgear. However, including gillnets in the exemption during July and August is unnecessary and would be duplicative because there is an existing exemption for vessels using large-mesh gillnets in a portion of Statistical Area 514 (including Cape Cod Bay) for the months of July and August. For the month of June we are concerned that interactions with large whales could increase by exempting gillnet gear in Cape Cod Bay. Therefore, the RA has determined that gillnet gear should not be included in the Western Exemption Area.

The Eastern Cape Cod Spiny Dogfish Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the RA upon request):

Point	N. Latitude	W. Longitude
Point_1	42°00'	70°00'
Point_2	42°00'	69°47.5'
Point_3	41°40'	69°47.5'
Point_4	41°29.5'	69°35.5'

Point_5	41°29.5'	69°23'
Point_6	41°26'	69°20'
Point_7	41°20'	69°20'
Point_8	41°20'	( <sup>1</sup> )
Point_9	( <sup>2</sup> )	70°00'
Point_10	( <sup>3</sup> )	70°00'
Point_11	( <sup>4</sup> )	70°00'
Point_1	42°00'	70°00'

(<sup>1</sup>) The eastern coastline of Nantucket, MA, at 41°20'N. lat.

(<sup>2</sup>) The northern coastline of Nantucket, MA, at 70°00'W. long.

(<sup>3</sup>) The southern coastline of Cape Cod, MA, at 70°00'W. long., then along the eastern coastline of Cape Cod, MA, to Point\_11.

(<sup>4</sup>) The northern coastline of Cape Cod, MA, at 70°00'W. long.

The Western Cape Cod Spiny Dogfish Exemption Area is bounded on the north by 42° 11.5' N. lat., bounded on the east by 70° 00' W. long., and bounded on the south and west by the coast of Massachusetts.

#### Comments and Responses

Comment 1: The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) commented that we should adopt the year-round option for the Eastern Exemption Area, as



included in the original request by the industry, because of the additional fishing opportunity it would provide to fishermen and because it would eliminate confusion.

Response 1: Available information does not support keeping the exempted fishery in the Eastern Exemption Area open year-round for gillnet, longline, and handgear, as proposed in Alternative 1, Option 2. As shown in the EA, there were several handgear trips in the months of September through December that exceeded the 5-percent threshold requirement for an exempted fishery. In addition, for many of the requested months there were no observed trips in the area for any of the gear types. Due to insufficient catch composition data for these months, and the increased number of trips exceeding 5 percent groundfish, Alternative 1, Option 2 was rejected and Alternative 1, Option 1 is the preferred option.

We are confident that the industry can use this exemption successfully. We have many existing exempted fisheries that successfully operate for certain months of the year. We will provide a permit holder letter to all spiny dogfish and NE multispecies permit holders regarding this exemption and a clear description will be included in our large-mesh exemption information sheet to minimize confusion.

Comment 2: CCCHFA asked that we modify the proposed exemption area to include the portion of Statistical Area 514 located beneath the 42° N. lat. line, i.e., Cape Cod Bay, as included in the original request by the industry.

Response 2: The area sought by the CCCHFA was initially not included in the proposed rule due to a lack of sufficient information. As stated in the preamble of this rule, in response to public comment on the proposed rule, we made an additional data request to MA DMF. Based on the data that MA DMF provided, we created a Western Exemption Area (Alternative 2 in the EA) to target spiny dogfish in this portion of Cape Cod Bay as sought in this comment. The

Western Exemption Area is included in this interim final rule for longline gear and handgear from June through August.

The Western Exemption Area in this interim final rule does not include gillnets, however. This exemption is unnecessary for July and August because a current exempted fishery for vessels using gillnets already exists in this area from July through August. Although information showed that gillnet gear caught less than 5 percent regulated species, we are concerned about potential increased interactions with large whales in June. Therefore, gillnet gear was not included in the Western Exemption Area in this rule.

Comment 3: X Northeast Fishery Sector, Inc (NEFS X) commented that we did not consider NEFS X's request for an exempted fishery for gillnets, specifically an exemption for large-mesh gillnets in statistical areas 521, 514, and 515 from May 1 to December 15 of each year.

Response 3: We disagree. In our analysis for this exemption we compiled NEFOP and ASM observer data of declared groundfish trips using gillnet, longline, and handgear in Statistical Areas 521, 514, and 515, as stated in the EA. Each of these gears was looked at separately in each Statistical Area. The 5-percent regulated multispecies bycatch threshold was exceeded in all months in all of the Statistical Areas where the exemption was requested, and therefore, could not be approved. The exempted fishery areas approved by this rule were selected based on sufficient information showing that the fishing activity met the bycatch requirements of an exempted fishery, and the exemption would not jeopardize fishing mortality objectives.

Comment 4: NEFS X also commented that their fishermen have demonstrated that the bycatch of regulated species is, or can be, reduced to less than 5 percent by weight of the total

catch, and that such an exemption will not jeopardize the fishing mortality objectives of the FMP.

Response 4: The 5-percent NE multispecies threshold applies to the trip level, i.e, the percentage of multispecies caught on a given trip. As shown in the EA for this action, although many trips in the requested area caught below the 5-percent threshold, many trips also exceeded it. In addition, the data we use to make our determination differ from those analyzed by NEFS X. NEFS X analyzed the landing weights of all of their sector's trips from FY 2010 and 2011 that were targeting dogfish using large-mesh gillnets, and took the overall average percentage of groundfish caught on these trips. In addition, NEFS X's data showed that the overall percentage of regulated species of these landings exceeded the 5-percent regulated species threshold (6.3 percent in FY 2010 and 5.1 percent in FY 2011). We analyzed all NEFOP and ASM trips from FY 2010 and 2011 for the Statistical Areas, gears, and months requested (target species was not taken into consideration). We analyzed each gear type and month individually and we found multiple trips that exceeded the 5-percent threshold in each area in each month requested. In order to avoid trips that exceeded the 5-percent threshold requirement, we revised the areas to meet the threshold requirements.

Comment 5: NEFS X commented that its members demonstrated in September of 2012 that a directed dogfish fishery could exist in the near-shore waters in Statistical Area 514 for gillnet gear.

Response 5: There is an existing gillnet exemption for spiny dogfish in a portion of Statistical Area 514 from July through August that provides the same opportunity to fish during those 2 months as sought in the Western Exemption Area with large-mesh gillnet gear. While, we did look at gillnet data in Statistical Area 514 year round initially, there were no areas or time

periods with data where trips did not exceed the 5-percent multispecies threshold. In addition, we have concerns about increased interactions with large whales with gillnet gear in Cape Cod Bay in June. Therefore, gillnet gear was not included in the Western Exemption Area.

#### Changes from the Proposed Rule

As stated above, based on public comment, we created an additional alternative (Alternative 2) to create the Western Exemption Area to target spiny dogfish in Cape Cod Bay for longline gear and handgear from June through August. Although this area was part of the original request by industry, it was not part of the original proposed rule for this action. Therefore, we are accepting comment on this rule to give the public a chance to voice their support or concerns with the Western Exemption Area. The regulations were revised from the proposed rule to reflect the addition of the Western Exemption Area by adding § 648.50 (a)(19)(ii).

#### Classification

NMFS has determined that this interim final rule is consistent with the FMP and the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to not be significant for purposes of Executive Order 12866.

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process and to give the public adequate notice and opportunity for comment. There is good cause under 5 U.S.C. 553(d)(3) and 553(b)(3)(B) to waive the 30-day delay in the rule's effective date and prior notice and the opportunity for public comment on the Western Exemption Area, respectively, because such delays could prevent

sector members from realizing the full potential savings in discards, which would be contrary to the public interest. Currently, sector members have an elevated calculated groundfish discard rate applied to trips targeting spiny dogfish fished under a declared NE multispecies trip. In FY 2010 and 2011, the value of the elevated discards applied to spiny dogfish trips was \$48,458.80 in the Eastern Exemption Area. There is an additional cost of lost revenues from spiny dogfish because these elevated discard rates discourage vessels from taking trips that target spiny dogfish. Because of the lack of current data in the Western Exemption Area, a cost of elevated discard rates to sectors in this area is expected, but the amount is unknown. Delaying the effective date of this rule could delay or prevent the full amount of cost savings.

Further, prior notice and comment is contrary to the public interest because the Western Exemption Area is open only seasonally from June 1 through August 31. NMFS solicited new data in response to a comment received during the comment period, which required additional analysis to determine whether the Western Exemption Area met the requirements for an exempted fishery. The time required for this analysis was not due to actions by the NMFS, and because vessels in the Western Exemption Area are only exempt from June through August of each year, the time required for prior notice and comment would prevent vessels from gaining full access to this area in 2013, thereby undermining the rule's utility. Providing vessels access to the Western Exemption Area on June 1 will allow vessels to realize the full economic benefits of the exemption, which are discussed below in the economic impacts section. The immediate benefits of the interim measures, implemented by this rule, the mitigation of substantial negative economic impacts to fishery participants, associated businesses, and coastal communities that depend on spiny dogfish revenues, outweigh the opportunity of advance notice and public

comment. Therefore, delaying the implementation of the Western Exemption Area to allow for prior notice and public comment would be contrary to the public interest.

In addition to the cost savings benefit in applying more accurate discard rates to groundfish and spiny dogfish trips, a waiver of the 30-day delay in effectiveness is justified under 5 U.S.C. 553(d)(1) because this rule grants an exemption by eliminating the requirement that vessels declare a NE multispecies trip while targeting spiny dogfish in the waters east and west of Cape Cod, MA. This creates more flexibility for the spiny dogfish fleet by relieving them from the restriction of the NE multispecies regulations, decreases the incentive to catch NE multispecies on a trip targeting spiny dogfish, and allows sector members to land their sector's ACE as opposed to losing it as discards.

Pursuant to 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) has been prepared, which describes the economic impacts that this rule will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule for this action, and the corresponding economic analyses prepared for this action in the EA and the Regulatory Impact Review (RIR). The contents of these documents are not repeated in detail here. Copies of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES). A description of the reasons for this action, the objectives of the action, and the legal basis for this interim final rule are found in the preamble to the proposed and final rules.

There are no Federal rules that duplicate, overlap, or conflict with this rule. This action does not include any new reporting, recordkeeping, or other compliance requirements. NMFS did not receive any public comments that addressed the IRFA. This rule creates a new spiny dogfish exemption area for gillnet, longline, and handgear vessels targeting spiny dogfish in the

waters east and west of Cape Cod, MA. The alternatives in this action were compared to different options for the exemption, including no action. The alternative options to the selected exemption include exempting a larger area for a longer period of time, year-round, and No Action options, which would continue to require vessels targeting spiny dogfish in these areas to be on a declared NE multispecies trip.

#### Description and Estimate of the Number of Small Entities to Which this Interim Final Rule Will Apply

This action will impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to the Mid-Atlantic Fishery Management Council's analysis, 2,743 vessels were issued spiny dogfish permits in 2011. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from Massachusetts (31.6 percent), New Jersey (14.7 percent), New Hampshire (11.4 percent), Rhode Island (9.8 percent), New York (8.0 percent), North Carolina (6.7 percent), and Virginia (5.8 percent). All of the potentially affected businesses are considered small entities under the standards described in NOAA Fisheries guidelines because they have gross receipts that do not exceed \$4 million annually.

#### Economic Impacts of this Action

Compared to the No Action alternative, the Preferred Alternatives (Alternative 1 Option 1, and Alternative 2 Option1) are expected to benefit the local fishing communities that have historically depended on the spiny dogfish fishery off Cape Cod, MA. This exemption was requested by members of the NE multispecies fishing industry, specifically sector members. The cost of fishing for spiny dogfish has become increasingly high primarily due to the deduction of calculated discards from each vessel's sector ACE when fishing on a sector trip. Because these

discards are deducted from each vessel's sector ACE, they represent a lost opportunity for fishing because they can no longer be landed for sale. Thus, this action will allow vessels to fish under this exemption outside of the groundfish regulations, and therefore prevent discards from being deducted from a sector's ACE at a higher rate than is actually occurring. The EA for this action estimates that the exemption could save vessels fishing in the Eastern Exemption Area approximately \$24,000 a year in uncaught calculated discards alone. The addition of the Western Exemption Area would add to this savings.

With the elimination of these low groundfish discard trips from the sector's discard stratum, the overall discard rate for the sector will likely increase because the spiny dogfish targeted trips that were observed were keeping the discard rate for trips targeting groundfish artificially low. Any increase in the discard rate will not represent a significant cost to the sector vessels that are not participating in the exemption. In addition, the calculated discard rates for both groundfish vessels and spiny dogfish vessels will be more accurate as a result of the exemption; more accurate discards are not expected to have an economic effect on the fishing community as a whole. Further, participation in this exemption is voluntary. A vessel may still choose to target spiny dogfish during the exemption period while on a declared groundfish trip should it be to their benefit.

#### Economic Impacts of Alternatives to the Proposed Action

The impacts of Alternative 1 Option 2, which extends the Eastern Exemption Area for the entire year, would be expected to be similar to the impacts of the Preferred Alternative, but the expanded time would allow more vessels a greater opportunity to participate in the exempted fishery. The EA for this action estimates that Alternative 1 Option 2 would save the industry an additional \$877.93 in uncaught discards compared to Alternative 1 Option 1. However, the data



indicate that Option 2 would likely result in a higher percentage of groundfish catch because several handgear trips caught greater than 5 percent regulated multispecies from September through December. In addition, the RA could not make a determination as to whether regulated groundfish bycatch was < 5 percent during January through May, because there are insufficient observer data available from the area during this time for all of the gear types. Providing an exemption for trips that caught over 5 percent regulated groundfish, or in areas where no data are available, would be contrary to the purpose and requirements of the Magnuson-Stevens Fishery Conservation and Management Act and the NE multispecies regulations. Therefore, this alternative was not selected.

The No Action Options would have a negative economic impact on spiny dogfish vessels relative to the preferred options. Under the No Action Options, sector fishermen targeting spiny dogfish would continue fishing on declared groundfish trips only to be charged a higher than observed groundfish discard rate for their trip targeting spiny dogfish. The spiny dogfish fishery is a valuable resource. The groundfish discards that are attributed to these trips come directly out of the vessel's sector's ACE, which takes away the opportunity to catch these groundfish in the future. Thus, sectors requested an exemption because of the economic burden that the cost of NE regulated multispecies discards applied to these trips had on sector fishermen targeting other stocks (i.e., spiny dogfish). As described above, it is estimated that this action could save vessels fishing in the Eastern Exemption Area approximately \$24,000 a year in discards alone, compared to the No Action Options.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule for which an agency is required to prepare a FRFA, the agency shall publish

one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the spiny dogfish and NE multispecies fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES).

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 2, 2013.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.14, paragraph (k)(5)(i) is revised to read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

(k)\* \* \*

(5)\* \* \*

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (a)(19), the Eastern and Western Cape Cod Spiny Dogfish Exemption Areas; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

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3. In § 648.80, paragraph (a)(3)(vi) is revised, and paragraph (a)(19) is added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(vi) Other restrictions and exemptions. A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18) through (a)(19), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

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(19) Cape Cod Spiny Dogfish Exemption Areas. Vessels issued a NE multispecies limited access permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the Eastern or Western Cape Cod Spiny Dogfish Exemption Area as defined under paragraph (a)(19)(i) through (a)(19)(ii) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements

for the Eastern or Western area, specified in paragraph (a)(19)(i) and (a)(19)(ii) of this section, respectively.

(i) Eastern area definition. The Eastern Cape Cod Spiny Dogfish Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

Eastern Cape Cod Spiny Dogfish Exemption Area

[June 1 through December 31, unless otherwise specified in paragraph (a)(19)(i)(A) of this section]

Point	N. lat.	W. long.
CCD 1.....	42/00'	70/00'
CCD 2.....	42/00'	69/47.5'
CCD 3.....	41/40'	69/47.5'
CCD 4.....	41/29.5'	69/35.5'
CCD 5.....	41/29.5'	69/23'
CCD 6.....	41/26'	69/20'
CCD 7.....	41/20'	69/20'
CCD 8.....	41/20'	( <sup>1</sup> )
CCD 9.....	( <sup>2</sup> )	70/00'
CCD 10.....	( <sup>3</sup> )	70/00'
CCD 11.....	( <sup>4</sup> )	70/00'
CCD 1.....	42/00'	70/00'

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- (<sup>1</sup>) The eastern coastline of Nantucket, MA at 41°20' N. lat.
- (<sup>2</sup>) The northern coastline of Nantucket, MA at 70°00' W. long.
- (<sup>3</sup>) The southern coastline of Cape Cod, MA at 70°00' W. long., then along the eastern coastline of Cape Cod, MA to Point\_11
- (<sup>4</sup>) The northern coastline of Cape Cod, MA, at 70°00' W. long.

(A) Requirements. (1) A vessel fishing in the Eastern Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species in accordance with the requirements of paragraph (a)(19) of this section.

(2) Vessels may use gillnet gear, as specified in § 648.80(a)(4)(iv), or longline gear as specified in § 648.80(a)(4)(v), from June 1 through December 31.

(3) Vessels may use handgear from June 1 through August 31.

(B) [Reserved]

(ii) Western area definition. The Western Cape Cod Spiny Dogfish Exemption Area is bounded on the north by 42°11.5' N. lat., bounded on the east by 70°00 W. long., and bounded on the south and west by the coast of Massachusetts (copies of a chart depicting the area are available from the Regional Administrator upon request).

(A) Requirements. (1) A vessel fishing in the Western Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species in accordance with the requirements of paragraph (a)(19) of this section..

(2) Vessels may use longline gear as specified in § 648.80(a)(4)(v), and handgear from June 1 through August 31.

(B) [Reserved]

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